IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1593 OF 2004

Mr.Narendra Pandharinath Joshi ..Petitioner

Versus

The Janta Sahakari Bank Ltd.,Pune
and Ors. ..Respondents

Mr.Pravin Mane i/by Uday Warunjikar for the petitioner.

Mr.A.A.Joshi for Respondent No.3.

Coram : S.C.Dharmadhikari,J

Date : 23.8.2005.

P.C. :-

1. Rule, returnable forthwith. The Advocate appearing for respondent nos.2 & 3 waives service. Respondent No.1 is served.

2. This Writ petition under Article 227 of the Constitution of India challenges an order passed on 10.6.2003 in an application (Misc. Application No.126/2002) praying for condonation of delay in filing of the appeal.

3. By the impugned order the application seeking condonation of delay in filing the appeal has been rejected.

4. The learned Advocate Mr.Mane appearing for the petitioner states that the impugned order suffers from an error apparent on the face of the record and is wholly perverse. He submits that the lower appellate Court ought to have condoned the delay in filing of this appeal. He submits that the delay was not such as is not liable to be condoned. In any event, there is no negligence, inaction or malafides on the part of the petitioner. He submits that the order passed by the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act 1960 is appealable to the Cooperative appellate Court and accordingly an appeal was preferred. The other appeal was preferred by respondent no.3. He submits that the Co-operative Court ought to have condoned the delay in filing of the appeal. He points out that the grounds set out in the application for condonation of delay demonstrate sufficient cause for non preferring the appeal within time. The Court below has taken a hyper technical view of the entire matter.

5. A perusal of the record demonstrates that the companion appeal is also barred by time. However, application for condonation of delay was allowed by the lower appellate Court. The petitioner is a party to the companion appeal. If this was the case, liberal view ought to have been taken in so

far as application of the petitioner is concerned. More so, when the same Judgment and order is under challenge in the pending appeal, the Court below would have been well advised to dispose of both the appeals on merits. Even otherwise, the petitioner had set out the ground of illness of his wife which prevented him from giving necessary instructions to his Advocate. Applying the settled principles, the delay ought to have been condoned. In my view, the learned Judge has erred seriously in not condoning the delay when the same was condoned in so far as respondent no.3 is concerned in the companion appeal.

6. The impugned Judgment and order is set aside. Rule is made absolute in terms of prayer clause-(a). The appeal preferred by the petitioner in the Co-operative appellate Court is restored to file. The said appeal be heard alongwith the appeal preferred by respondent no.3 on merits and in accordance with law. Rule made absolute in the above terms.

(S.C.Dharmadhikari,J)